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#38

**PATENT APPLICATION  
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Reissue Application of U.S. Patent No. 4,775,624 )  
Applicants : Nils U. Bang, *et al* )  
Serial No. : 09/185,663 ) Group Art Unit: 1652  
Filed : November 4, 1998 )  
For : Vectors and Compounds For ) Examiner:  
Expression Of Human Protein C ) William W. Moore  
Docket No. : X-06737C )

**DECLARATION UNDER 37 C.F.R. 1.175(a)**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450  
Sir:

Petitioner, through the undersigned, hereby declares that Petitioner is a corporation existing under the laws of the State of Indiana, having a place of business at Lilly Corporate Center, Indianapolis, Indiana 46285, and is the owner of the entire right, title and interest in and to United States Letters Patent No. 4,775,624, granted October 4, 1988, and entitled "VECTORS AND COMPOUNDS FOR EXPRESSION OF HUMAN PROTEIN C."

Petitioner further declares the following:

Petitioner verily believes United States Letters Patent No. 4,775,624 may be at least partly inoperative or invalid for the reason that Petitioner failed to provide claims of intermediate scope.

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The error in claiming was discovered as result of discussions involving Petitioner's attorneys. During those discussions, it was discovered that claims of intermediate scope were lacking in the scope of coverage.

The first set of claims to be added further defines the polypeptide, vector and host cell employed in the methods of production. *See*, claims 85, 88, 89 and 90. Because these claims depend from original claim 12, wherein the vector and host cell employed is not specified, the added claims are more narrow. It was error for Petitioner to omit a set of claims defining the vectors employed.

The second set of claims to be added provides additional steps for the claimed method of production, for example, the steps of isolating the polypeptide and activating the human protein C zymogen. *See*, claims 84, 86 and 87. Because additional steps are added to the claimed method, the added claims are more narrow than original claim 12 of the patent. It was error for Petitioner to omit such claims in the Patent.

The third set of claims to be added further define the plasmids of the invention as comprising an additional gene or promoter. *See*, claims 91-97. Because these claims recite additional components being present in the plasmids, these claims are more narrow than original claim 2. It was error for Petitioner to omit claims of this scope.

In addition, claim 83 was added to recite that the coding sequence for the active heavy chain of human protein C is added to the claims coding sequence of the active light chain of human protein C. Because this claim specifies the sequence for both the heavy and light chains, it is more narrow than original claim 81. It was error for Petitioner to omit a claim of this scope.

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This application for reissue of the original Letters Patent addresses the above-identified errors in claiming by adding dependent claims further defining the invention of Bang et al. All errors corrected in this reissue application up to the time of filing of this declaration not covered by a previous declaration were made without deceptive intent.

Petitioner verily believes that the named inventors Nils U. Bang, residing at 706 Fast 71<sup>st</sup> Street, Indianapolis, Indiana, Citizen of the United States; Robert J. Beckman, residing at 6644 Golden Oak Lane, Avon, Indiana 46123, citizen of the United States; S. Richard Jaskunas, residing at 4150 Juniper Court, Indianapolis, Indiana 46250, citizen of the United States; Mei-Huei T. Lai, residing at 2110 Pebble Beach Drive, Carmel, Indiana 46032, citizen of the United States; Sheila P. Little, residing at 4480 North Meridian Street, Indianapolis, Indiana 46208, citizen of the United States; George L. Long, residing at 18 Beech Street, Burlington, Vermont 05401; and Robert F. Santerre, residing at 344 Old Stage Road, Arrowsic Maine 04530, to be the first, original and joint inventors of the subject matter which is claimed in this application for reissue and for which reissue of the original Letters Patent on the invention entitled "VECTORS AND COMPOUNDS FOR EXPRESSION OF HUMAN PROTEIN C" is sought, and Petitioner does not believe that the invention was ever known or used before the above-named inventors' invention thereof was made.

Petitioner has reviewed and understands the contents of the specification, including the claims, as amended by any amendment referred to above. The amendments referred to above include addition of claims 83-97 to original claims 1-82.

Petitioner acknowledges the duty to disclose information of which Petitioner is aware and which is material to the examination of this application for reissue.

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The undersigned hereby declares further that all statements made herein of his own knowledge are true, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

ELI LILLY AND COMPANY

By: Douglas K. Norman  
Name: Douglas K. Norman  
Title: Deputy General Patent Counsel

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Indianapolis, Indiana 46285

Date: January 21, 2005